

Chapter 11

MARINE ACTIVITIES, STRUCTURES AND WAYS*

* **Cross References:** Conservation commission, § 2-76 et seq.; buildings and building regulations, Ch. 5; fire prevention and protection, Ch. 7; housing, Ch. 8; solid waste, Ch. 13; streets, sidewalks and other public places, Ch. 14; discharge of sewerage into surface waters prohibited, § 16-26; zoning and subdivision of land, App. A; marine construction, App. A, § 407.

State Law References: Waters and navigation, 38 M.R.S.A. § 1 et seq.

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ARTICLE I.

HARBOR, COASTAL, TIDAL AND NAVIGABLE FRESH WATERS

Sec. 11-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Channels: Those paths designated by this chapter for navigation in or access to the harbor, coastal, tidal and navigable fresh waters of Brunswick.

Commercial use: A use with profit as a primary aim.

Idle speed: The minimum speed necessary to maintain steerage and control of a moving watercraft

Mooring: An underwater device either helix, granite block or mushroom, which tethers boats. A temporary mooring is one which is constructed to be hauled out of the water seasonally. A permanent mooring is one which is constructed to winter over in the water. A flats mooring is one which is located on the mud flats at low tide.

Riparian owner: An owner of land with a minimum of one hundred (100) feet of shorefront.

Watercraft: Any type of vessel, boat, barge, float, or craft used as a means of transportation on the water.
(Ord. of 4-4-05)

Sec. 11-2. Channels.

(a) *Establishment of channels.* Two (2) channels are established, described as follows:

- (1) Commencing at the Bath Road bridge (formerly Route #1) as it crosses the New Meadows River, thence following the high water mark of the New Meadows River southerly to the southerly tip of Howard Point, thence easterly to the town line between Brunswick and West Bath, thence following the town line northerly to the Bath Road bridge, thence westerly along the Bath Road bridge to the point of beginning.
- (2) Commencing at the mean high water line on the Merepoint Boat Launch ramp surface and extending approximately three hundred fifty (350) feet to the southeast between buoys marking the fifty (50) foot wide approach lane to the ramp.

(b) *Passage of vessels.* A person shall not use any watercraft or any other device or structure within the described channels so as to interfere with or impede the passage of vessels in the channel in any manner.

(c) *Mooring.* A person shall not place, anchor, or moor any watercraft within the described channels without the permission of the harbormaster.
(Ord. of 4-4-05)

Sec. 11-3. Harbormaster.

(a) *Appointment.* The town shall appoint a harbormaster annually on May 1st.

(b) *Duties.* The harbor master shall have the following powers and duties:

- (1) To the extent of jurisdiction, enforce any and all federal, state and local laws, ordinances, codes, rules or regulations relating to the management and control of Brunswick's harbor, coastal, tidal and navigable fresh waters, shores, coastline, boat launch facilities, and floats; and provide information or seek input as appropriate from any source, including the marine resources committee, marine wardens, town manager, town council, or town attorney.
- (2) Approve and control the placement of moorings within the harbor, coastal, tidal and navigable fresh waters of Brunswick.

(Ord. of 4-4-05)

Sec. 11-4. Moorings.

(a) *Registration.* All moorings located in the harbor, coastal, tidal and navigable fresh waters of Brunswick shall be registered. Registration shall be on forms provided by the harbormaster that, at a minimum, require the following information:

- (1) Description and weight of the watercraft moored;
- (2) Type of mooring ball or buoy;
- (3) Type and weight of mooring;
- (4) Type and size of bottom and top chains.

Existing moorings: All existing moorings in the harbor, coastal, tidal and navigable fresh waters of Brunswick shall be registered within ninety (90) days of the effective date of this article. The harbormaster shall send via First Class U.S. Mail notification of the registration requirement and a copy of this article to all owners of existing moorings.

New moorings: After the effective date of this article, all moorings shall be registered prior to location of the mooring.

(b) *Placement standards.* The harbormaster shall approve the location of all moorings in the harbor, coastal, and tidal waters of Brunswick, except for existing commercial moorings in mooring fields already approved by the Army Corps of Engineers and the Maine Department of Environmental Protection. All moorings shall meet the following standards:

- (1) Moorings shall be reasonably adequate for the size, weight and windage of the watercraft.
- (2) Moorings shall be located in areas that do not interfere with navigation.
- (3) Moorings shall not encroach into the channels of Brunswick.
- (4) Moorings shall be located in areas that do not unreasonably affect natural resources.
- (5) Moorings shall not be located in areas that are inconsistent with the terms or conditions offered to, or required by, any federal, state or local agency as part of a regulatory permitting process.

All new moorings that meet the above standards but are not placed in the location approved by the harbormaster shall be moved by the owner at his or her own expense in accordance with the instructions of the harbormaster. Any existing moorings that do not meet the above standards shall be removed, repaired, replaced or relocated as applicable. In the event of the failure of the owner to comply with this subsection (b), the harbormaster shall move or remove the improperly located mooring and the cost shall be borne by the owner of the mooring.

(c) *Identifying numbers.* Identifying numbers shall be issued to mooring owners, and mooring balls and buoys must be clearly marked with the issued number. Numbers shall be a minimum of four (4) inches and visible at all times. Replacement mooring balls and buoys shall maintain the originally assigned number.

(Ord. of 4-4-05)

Sec. 11-5. Operation of watercraft.

Operation of watercraft at greater than idle speed within two hundred (200) feet of the shoreline or within the channels of Brunswick is prohibited.

(Ord. of 4-4-05)

Sec. 11-6. Town launch facilities.

(a) Use of town launch facilities consistent with the provisions of this article shall be permitted. Commercial uses of town launch facilities require a special activity permit from the town clerk.

(b) The following activities are prohibited at town launch facilities:

(1) Storage of bait, catch, or gear for unreasonable periods of time, as determined by the harbormaster.

(2) Processing of seafood products; for the purposes of this section, "processing" does not include washing clams by repeated submersion of bushel bags in the water.

(3) Anchoring or mooring.

(4) Tying up to floats for more than thirty (30) minutes.

(5) Swimming or fishing in designated areas.

(6) Power loading or unloading, boat washing, boat painting, and bilge draining.

(Ord. of 4-4-05)

Sec. 11-7. Disruptive conduct.

No person shall disrupt the safe and lawful activities, or in any way threaten the public safety, in or around town launch facilities, floats, harbors, or tidal and coastal waters of the Town of Brunswick.

(Ord. of 4-4-05)

Sec. 11-8. Menaces to navigation.

The harbormaster is authorized to take whatever action is necessary and appropriate to remove any menace to navigation within the harbor, coastal, tidal and navigable fresh waters of the Town of Brunswick. This shall include, but is not limited to, contracting for removal of the menace by the authorities of the State of Maine, Federal Government, or a private contractor at the expense of either the Town of Brunswick, some other governmental entity, or the private entity responsible for the creation of the menace.

(Ord. of 4-4-05)

Sec. 11-9. Dumping of sewage prohibited.

No person may discharge, spill or permit to be discharged sewage, garbage, or other pollutants from any boat into the harbor, coastal, tidal and navigable fresh waters within the boundaries of the Town of Brunswick or onto the ice or banks thereof in such a manner that the same may fall or be washed into such waters or in such a manner that the drainage may flow into such waters.
(Ord. of 4-4-05)

Sec. 11-10. Failure to obey order of the harbormaster.

As provided by 38 M.R.S.A., Section 13, a person is guilty of failure to obey an order of the harbormaster if the person intentionally, knowingly or recklessly fails to obey any lawful order of the harbormaster authorized pursuant to 38 M.R.S.A., Section 1, et seq. Failure to obey an order of the harbormaster is a Class E Crime.
(Ord. of 4-4-05)

Sec. 11-11. Forfeiture.

Any skiff left tied to a town float without proper identification, or left sunk, or awash, for a period exceeding forty-eight (48) hours shall be deemed abandoned for the purposes of this section. Moorings and skiffs abandoned by their owners shall be impounded by the harbormaster and disposed of according to the procedure outlined in 25 M.R.S.A., Section 401. The town shall not be liable for any damage sustained by an impounded skiff or mooring.
(Ord. of 4-4-05)

Sec. 11-12. Enforcement.

This chapter shall be enforced pursuant to the provisions of 30-A M.R.S.A. § 4452, as amended from time to time. Any person found in violation of this article shall, after notice and hearing, lose his or her mooring privileges and all rights to use the town launch facilities and floats. In addition, the town shall have available all other remedies provided by law.
(Ord. of 4-4-05)

Secs. 11-13--11-25. Reserved.

ARTICLE II.

RESERVED*

* **Editors Note:** An ordinance of April 4, 2005, repealed art. II, divs. 1 and 2, §§ 11-26, 11-51--11-53, in its entirety. Formerly, said article pertained to harbor, as enacted by an ordinance adopted April 1, 1974; as amended. The user is directed to art. I of this chapter for similar provisions enacted by the ordinance of April 4, 2005.

Secs. 11-26--11-70. Reserved.

ARTICLE III.

SHELLFISHING*

* **Cross References:** Conservation Commission, § 2-76 et seq.; parks and recreation areas, § 14-96 et seq.
State Law References: Municipal Shellfish Conservation Programs, 12 M.R.S.A. § 6671 et seq.

DIVISION 1.

GENERALLY

Sec. 11-71. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Certified municipal shellfish conservation warden shall mean the law enforcement officer appointed by the town council to enforce this chapter.

Coastal waters means all waters of the town within the rise and fall of the tide and within the marine limits of the jurisdiction of the town.

Immediate family shall mean, spouse and children.

Lot shall mean the total number of softshell clams in bulk pile. Where softshell clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

Notification shall mean, unless otherwise stated herein and for the purposes of hearing notices under this article, mailing by certified mail to the last known address.

Possession shall mean to have in one's custody or control, either personally or by another who is under one's control anywhere within the municipal boundaries.

Resident shall mean a person who has physically resided at a fixed, permanent, and principal home in the town for at least three (3) months next prior to the time his claim of residence is made.

Shellfish shall mean softshell clams (*Mya arenaria*), quahogs (*Mercenaria mercenaria*), razor clams (*Ensis directus*), American oysters (*Crassostrea Virginica*) and European oysters (*Ostrea edulis*).

Take means to remove or attempt to remove a shellfish from its natural habitat.
(Ord. of 3-6-89, § 104; Ord. of 2-5-90, § 104; Ord. of 2-18-92, Ord. of 4-5-93, Ord. of 2-22-94; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1))

Cross References: Definitions and rules of construction generally, § 1-2.

Sec. 11-72. Authority.

This article is enacted in accordance with 12 M.R.S.A. § 6671.
(Ord. of 3-6-89, § 101; Ord. of 2-5-90, § 101; Ord. of 2-18-92; Ord. of 3-16-99)

Sec. 11-73. Purpose.

The purpose of this chapter is as follows:

- (1) To regulate the harvesting of shellfish in the town.
- (2) To provide management programs in the town for the conservation of shellfish in a manner consistent with the production of a reasonable yield to sustain commercial shellfish harvesters.
(Ord. of 3-6-89, § 102; Ord. of 2-5-90, § 102; Ord. of 2-18-92; Ord. of 1-16-96; Ord. of 3-16-99; Ord. of 2-6-01(1))

Sec. 11-74. Conservation, management of resources.

It is hereby determined as follows:

- (1) The coastal waters of the town are a very valuable shellfish resource which is important to the local economy.
- (2) These marine resources are not an inexhaustible resource, and, therefore, they must be prudently managed in order to remain viable.
- (3) As part of the management process it is deemed vitally necessary to restrict the taking of shellfish by limiting shellfish licenses; restrict the size and quantity of shellfish which may be harvested; and, take other measures as outlined in this chapter.
(Ord. of 3-6-89, § 103; Ord. of 2-5-90, § 103; Ord. of 2-18-92, Ord. of 4-5-93; Ord. of 3-16-99)

Sec. 11-75. Enforcement.

The chapter shall be enforced by the certified municipal shellfish conservation warden, or by any municipal shellfish conservation warden appointed by the town, who within one year of appointment must be certified by the commissioner of marine resources.
(Ord. of 3-6-89, § 501; Ord. of 2-5-90, § 501; Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 8-15-94; Ord. of 3-16-99)

Sec. 11-76. Penalty.

A person who violates this chapter shall be punished as provided in 12 M.R.S.A. § 6671.

A person who takes or possesses shellfish in violation of a municipal ordinance commits a crime with significant fines and license suspensions.
(Ord. of 3-6-89, § 502; Ord. of 2-5-90, § 502; Ord. of 2-18-92, Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 1-18-00(1))

Sec. 11-77. Amendment.

A certified copy of an amendment to this article shall be filed with the commissioner of marine resources within twenty (20) days of its adoption to preserve its validity.
(Ord. of 3-6-89, § 504; Ord. of 2-5-90, § 504; Ord. of 2-18-92, Ord. of 4-5-93; Emergency Ord. of 8-5-96; Ord. of 8-19-96; Ord. of 3-16-99; Ord. of 11-3-03)

Secs. 11-78--11-95. Reserved.

DIVISION 2.

MARINE RESOURCE COMMITTEE*

* **Cross References:** Boards, committees, commissions, § 2-51 et seq.

Sec. 11-96. Established, members, etc.

There is hereby established a marine resource committee consisting of seven (7) members and two (2) alternates to be appointed by the town council. If sufficient applications are available, the members must include three (3) town licensed resident commercial shellfish harvesters, three (3) residents of the community who do not possess a town or state commercial shellfish license and one (1) town licensed resident recreational shellfish harvester. The alternate may be from any category, and may act in the absence of a member. If sufficient applications are not available in a category after two (2) rounds of advertisements of the vacancy, the alternate will fill the vacancy and the alternate will be advertised. Members and alternates shall be appointed for three (3) year terms. Alternates shall be appointed for three-year terms. The town council shall appoint a person to fill a vacancy for the unexpired term. The committee shall choose a chairman, vice-chairman and secretary. The chairman shall preside at all meetings of the committee. The vice-chairman shall preside in the chairman's absence. The secretary shall record and keep minutes of each meeting. Any committee member who has three (3) or more unexcused absences from committee meetings in a year shall be removed and replaced with a new member by the town council.

(Ord. of 3-6-89, § 201; Ord. of 2-5-90, § 201; Ord. of 2-18-92, Ord. of 4-5-93; Ord. of 9-5-95; Ord. of 1-16-96; Emergency Ord. of 8-5-96; Ord. of 8-19-96, Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1))

Sec. 11-97. Powers and duties.

The marine resource committee shall have the following powers and duties:

- (1) To administer and coordinate the shellfish conservation program.
- (2) To recommend to the town council how the money appropriated for shellfish conservation programs should be spent.
- (3) To survey the coastal waters to obtain and maintain current information on shellfish resources, including:
 - a. The determination of size frequency.

- b. The determination of growth rate.
- c. The estimation of the available standing crop.
- d. The estimation of potential yield.
- e. The identification of sources of harmful pollution.
- f. The identification of other resource problems, such as green crab predation and mussel competition.

- (4) To determine the current level of use of the shellfish resources.
- (5) To cooperate with the Department of Marine Resources and others in carrying on experimental programs.
- (6) To prepare and promulgate a shellfish conservation plan in cooperation with the Department of Marine Resources based on the results of the shellfish survey, recommending area rotation, seeding, transplanting, predator control, and the opening and closing of the coastal waters.
- (7) To collect harvest data documenting local values of shellfish resources.
- (8) To make an annual written report to the town and the Department of Marine Resources detailing funds available, expenditures made, shellfish population data, results of all conservation and experimental programs, enforcement activities, and sources of pollution, predation, competition and other resource problems.
- (9) To establish annually in conjunction with the Department of Marine Resources the number of commercial shellfish harvesting licenses to be issued.

(Ord. of 3-6-89, § 202; Ord. of 2-5-90, § 202; Ord. of 2-18-92, Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 6-5-00(1))

Secs. 11-98--11-110. Reserved.

DIVISION 3.

SHELLFISH REGIONAL ADVISORY COMMISSION*

* **Editors Note:** Former Div. 3, §§ 11-111--11-114, relative to the shellfish advisory commission, was deleted by an ordinance adopted Aug. 15, 1994, due to no remaining reciprocal agreements. The provisions of former Div. 3, derived from §§ 401--404 of an ordinance of March 6, 1989; §§ 401--404 of an ordinance of Feb. 5, 1990; an ordinance of Feb. 18, 1992; an ordinance of April 5, 1993; and an ordinance of Feb. 22, 1994.

Secs. 11-111--11-130. Reserved.

DIVISION 4.

LICENSE*

* **Cross References:** Licenses and business regulations, ch. 10.

Sec. 11-131. License required.

A person shall not take or possess shellfish from coastal waters of the town without first obtaining a license from the town clerk or the town clerk's designee.
(Ord. of 3-6-89, § 301; Ord. of 2-5-90, § 301; Ord. of 3-4-91; Ord. of 2-18-92, Ord. of 4-5-93, Ord. of 2-22-94, Ord. of 8-15-94; Ord. of 3-16-99)

Sec. 11-132. Categories.

- (a) There are six (6) types of licenses as follows:
 - (1) *Resident commercial shellfish license.* This license entitles the licensee to harvest any amount of shellfish from the coastal waters of the town where and when it is otherwise lawful to do so.
 - (2) *Nonresident commercial shellfish license.* This license entitles the licensee to take or possess any amount of shellfish from the coastal waters of the town where and when it is otherwise lawful to do so.
 - (3) *Resident recreational shellfish license.* This license is available to residents and nonresident owners of real estate within the town as well as immediate family members of nonresident real estate owners within the town and entitles the licensee to take or possess no more than one (1) peck of shellfish per tide from the coastal waters of the town, not for sale, but for the use of the harvester and the harvester's immediate family, where and when it is otherwise lawful to do so.
 - (4) *Nonresident recreational shellfish license.* This license entitles the licensee to take or possess no more than (1) peck of shellfish per tide from the coastal waters of the town, not for sale, but for the use of the harvester and the harvester's immediate family, where and when it is otherwise lawful to do so.
 - (5) *Resident student shellfish license.* This license allows the licensee to harvest one (1) bushel of shellfish per tide from June 15th (inclusive) to September 1st (inclusive) from the coastal waters of the town to where and when it is otherwise lawful to do so.
 - (6) *Nonresident student shellfish license.* This license allows the licensee to harvest one (1) bushel of shellfish per tide from June 15th (inclusive) to September 1st (inclusive) from the costal waters of the town where and when it is otherwise lawful to do so.

(b) The town shall provide ten (10) percent of the resident commercial, recreational and student licenses to nonresidents.

(c) Any license issued under this division is subject to the partial or total closing of coastal waters under section 11-161 of this chapter.
(Ord. of 3-6-89, § 304; Ord. of 2-5-90, § 304; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 2-22-94, Ord. of 8-15-94; Ord. of 1-16-96; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1))

Sec. 11-133. Qualification of licensee.

(a) *Residency qualifications*

- (1) An applicant for a resident commercial shellfish license shall be a resident of the town whose Brunswick shellfish license is not currently under suspension for a second closed area conviction pursuant to section 11-141(b) and whose state shellfish license is not currently under suspension for a second closed area conviction.
- (2) An applicant for a non-resident commercial shellfish license is any person who is not a resident of the town whose Brunswick shellfish license is not currently under suspension for a second closed area conviction pursuant to section 11-141(b), and whose state shellfish license is not currently under suspension for a second closed area conviction.
- (3) An applicant for a resident recreational shellfish license must be either a resident of the town or nonresident owner of real estate within the town or immediate family member of nonresident owner of real estate within the town and whose shellfish license is not currently under suspension pursuant to this chapter.
- (4) An applicant for a nonresident recreation shellfish license is any person who is not a resident of the town and whose shellfish license is not currently under suspension pursuant to this chapter.
- (5) The place of residence of an applicant as stated on any other license is not determinative of the applicant's true place of residence. Where necessary the town clerk shall require the applicant to produce evidence of his residence before issuing the license.
- (6) An applicant for a resident student shellfish license shall be a resident of the town who has attained his or her 13th birthday but has not yet attained his or her 21st birthday as of March 1st of the year of application. The applicant shall be enrolled fulltime in a primary or secondary school or educational program.
- (7) An applicant for a nonresident student shellfish license shall be a nonresident of the town who has attained his or her 13th birthday but has not yet attained his or her 21st birthday as of March 1st of the year of application. The applicant shall be enrolled fulltime in a primary or secondary school or educational program.

(b) *Conservation Time.* A licensed commercial shellfish harvester must obtain a total of 10 conservation credit points between February 1 and December 1 in order to remain eligible to obtain a license for the next licensing year. This requirement to begin obtaining conservation credits will be effective February 1, 2006.

- (1) *Conservation Credit Activities.* Participation in any of the following activities results in the granting of conservation credit as specified:

Participation in any one of the following activities shall deem a harvester eligible to receive 2 conservation credit points per event attended:

- (a) documented attendance at a Brunswick Marine Resource Committee meeting or Brunswick Marine Resource Committee public hearing
- (b) documented attendance at a regional or State shellfish committee meeting
- (c) documented attendance at a shellfish conference (i.e. Fisherman's Forum)

Participation in any one of the following activities shall deem a harvester eligible to receive 5 conservation credit points per event attended:

- (a) participation in a Brunswick Marine Resource Committee sponsored shellfish reseeding project
- (b) participation in a Brunswick Marine Resource Committee sponsored experimental shellfish enhancement project
- (c) participation in Town of Brunswick annual shellfish surveys
- (d) participation in Town of Brunswick water quality monitoring event
- (e) participation in an organized coastal or environmental clean up along within the Town of Brunswick
- (f) participation in non-point pollution identification or remediation project within the Town of Brunswick

A minimum of three (3) conservation projects shall be scheduled prior to the April meeting of the Brunswick Marine Resources Committee

Dates of the three (3) conservation projects scheduled by the Marine Resources Committee will be posted in Town Hall and included on the Town of Brunswick Shellfish Hotline telephone message. Any conservation projects scheduled subsequent to the April meeting will be noticed similarly.

A currently licensed harvester who does not complete the required conservation time credit will not receive a license for the next license year.

The accumulation of conservation credit must be completed by December 1 of the current license year.

- (2) *Documentation of Conservation Credit.* Participation in any of the conservation credit activities specified in this ordinance must be documented. Documentation shall be in the form of a signature on an event sign in sheet, name appearing as an attendee in official meeting minutes, receipt of conference registration, or records maintained by the Brunswick Marine Warden, in order for conservation credit points to be awarded. Official minutes of Brunswick Marine Resource Committee meetings shall include a list of attendees present and shall be approved by a vote of the Committee. Harvester attending a field activity (5 point category) shall receive a receipt of attendance from the Shellfish Warden. Copies of the receipt shall be held by the Marine Resource Warden and submitted to the Town Clerk.

All records and conservation credit logs will be maintained by the Shellfish Warden and will be held in the Shellfish Warden's office.

- (3) *Determination of Conservation Credit Completion.* By the first business day of January the Shellfish Warden shall compile documented conservation time of each individual harvester and forward a list of those harvesters determined to have satisfied the conservation credit requirement to the Town Clerk.

Harvesters included on the list submitted by the Shellfish Warden shall be eligible for a commercial license for the upcoming license year if a notice of intent has been filed by the deadline.

Harvesters will be notified of their status in terms of conservation credit completeness by the Shellfish Warden by October 31 for credits earned by October 15. A final status will be mailed by December 10.

- (4) *Approved Absence from Conservation Credit Requirement.* Harvesters who have not completed a full 10 points of conservation credit in a given license year are only eligible for a license if their absence from participation in conservation credit activities are approved by the Shellfish Warden or Marine Resources Committee.

Approved absences may include an extended and documented illness, or an extended illness of an immediate family member that is under the immediate care of the Harvester.

Requests for a determination of approved absence must be made in writing to the Shellfish Warden and must be submitted no later than December 15th. The request shall include evidence to support an approval of absence determination.

If the absence is approved, the harvester will be required to make up the remaining conservation credit points during the next license year.

If the absence is not approved, the harvester will not be eligible to obtain a license.

- (5) *Appeal Procedure.* A harvester may appeal any determination of eligibility made by the Shellfish Warden. Requests for appeals must be made in writing to the Marine Resource Committee by December 31st. Appeals will be decided by the Marine Resources Committee during its January meeting. Decisions shall be provided to the Town Clerk in writing no later than 5 days after the meeting.

(Ord. of 3-6-89, § 307; Ord. of 2-5-90, § 307; Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 2-22-94, Ord. of 8-15-94; Ord. of 1-16-96; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1); Ord. of 10-3-05)

Sec. 11-134. Application.

- (a) The application for a license required under this chapter shall be in the form of an affidavit. It

shall contain the applicant's name, physical location of residence, mailing address, period of residence, date and place of birth, height, weight, eye and hair color, and such other necessary information as the town clerk may require. The resident address shall be the physical location of the residence. The mailing address shall be such that the applicant utilizes to receive mail from the U.S. Postal Service. It must be signed by the applicant and acknowledged by the town clerk. The town clerk shall note on the application the date the license was issued. The town clerk shall file the application with the records.

(b) An application for a student shellfish license shall also be in the form of an affidavit, which shall include:

- (1) Proof that the applicant has attained his or her 13th birthday but has not yet attained his or her 21st birthday as of March 1st of the license year.
- (2) Proof of residency.
- (3) Proof of enrollment in a school or state approved educational program.
- (4) A letter of recommendation from the superintendent or equivalent official in the school or educational program.

An application for a student shellfish license shall include a statement in bold print: **THE RECEIPT OF A STUDENT SHELLFISH LICENSE OR LICENSES PROVIDES NO CREDIT IN THE COMMERCIAL LICENSE SELECTION PROCESS.**

(Ord. of 3-6-89, § 308; Ord. of 2-5-90, § 308; Ord. of 2-18-92, Ord. of 2-22-94; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 2-6-01(1); Ord. of 11-3-03)

Sec. 11-135. Misrepresentation; change of residence.

(a) It shall be a violation of this article for any person to falsify or give false information in connection with a shellfish license application. In addition to any criminal penalties which may result from a violation of this chapter, the shellfish license granted to any person who gives false information on a shellfish license application shall be void after notice and hearing.

(b) A person holding a resident commercial shellfish license or a resident student shellfish license shall physically reside at a fixed, permanent, and principal home in the town during the license period, or shall surrender the license. If a person does not do so, the license shall be void after notice and hearing.

(c) A person holding a resident recreational shellfish license shall physically reside at a fixed, permanent, and principal home in the town or be a nonresident owner of real estate within the town or immediate family member of nonresident real estate owner within the town during the license period, or shall surrender the license. If a person does not do so, the license shall be void after notice and hearing.

(d) A person applying for, or holding a shellfish license under this chapter, shall notify the town clerk within ten (10) days of an address change, regardless of whether the address change is also a change of residency.

(Ord. of 3-6-89, § 310; Ord. of 2-5-90, § 310; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 1-16-96; Emergency

Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 6-5-00(1); Ord. of 2-6-01(1))

Sec. 11-136. Fees.

The applicant for a license under this chapter shall pay a fee as follows:

- (1) Resident commercial shellfish license, two hundred dollars (\$200.00).
- (2) Nonresident commercial shellfish license, four hundred dollars (\$400.00).
- (3) Resident recreational shellfish license, fifteen dollars (\$15.00); over age sixty-two (62), free.
- (4) Nonresident recreational shellfish license, thirty dollars (\$30.00); over age sixty-two (62), free.
- (5) Resident student shellfish license, fifty dollars (\$50.00).
- (6) Nonresident student shellfish license, one hundred dollars (\$100.00).

(Ord. of 3-6-89, § 305; Ord. of 2-5-90, § 305; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 2-22-94; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 6-5-00(1); Ord. of 2-6-01(1))

Sec. 11-137. Exhibition of license.

When any person is engaged in any activity which is licensed under this chapter, that person shall, on request of a certified municipal shellfish conservation warden, exhibit his license.

(Ord. of 3-6-89, § 301 (1, 2); Ord. of 2-5-90, § 301(1), (2); Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 3-16-99)

Sec. 11-138. Consent to inspection for shellfish.

A certified municipal shellfish conservation warden, within the warden's jurisdiction, has all the search powers of a marine patrol officer under Title 12, Section 6025(4). Those powers currently include the power to search without a warrant, upon probable cause, any watercraft or container containing marine organisms possessed or taken in violation of law.

(Ord. of 3-6-89, § 301 (3); Ord. of 2-5-90, § 301 (3); Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 2-22-94; Ord. of 3-16-99; Ord. of 1-18-00(1))

Sec. 11-139. Stopping for inspection.

It shall be unlawful for the operator of a motor vehicle, boat, vessel, or conveyance of any kind, or any person:

- (1) *Stopping.* To fail or refuse to stop immediately upon request or signal of any certified municipal shellfish conservation warden in uniform.
- (2) *Remaining stopped.* After he has so stopped, to fail to remain stopped until the certified

municipal shellfish conservation warden in uniform reaches his immediate vicinity and makes known to that operator the reason for the request or signal.

- (3) *Standing by.* To fail or refuse to stand by immediately for inspection on request of any certified municipal shellfish conservation warden in uniform.
- (4) *Throwing or dumping items.* Who has been requested or signaled to stop by a certified municipal shellfish conservation warden in uniform to throw or dump into any coastal waters any shellfish, or any pail, bag, barrel or other container of any type or the contents thereof before the certified municipal shellfish conservation warden in uniform has inspected the same.

(Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 2-22-94; Ord. of 3-16-99)

Editors Note: Former § 11-139, relative to a prohibition on night shellfish harvesting, was amended in its entirety by an ordinance adopted Feb. 18, 1992. The provisions of former § 11-139 derived from § 301(4) of an ordinance adopted March 6, 1989 and § 301(4) of an ordinance adopted Feb. 5, 1990.

Sec. 11-140. Limitation on number of licenses.

(a) The shellfish resources are limited. A commercial, recreational or student shellfish harvester can be expected to harvest a certain volume of shellfish per year; therefore, the number of shellfish harvesters must be controlled to preserve the shellfish resource. The number of available shellfish licenses of each type will vary from year to year according to the findings and estimates of the Marine Resource Committee and the State Marine Resource Regional Biologist based on data concerning resource capabilities and management requirements consistent with proper resource utilization as determined by shellfish population surveys conducted pursuant to section 11-97. There shall be no limitation by number or time frame for resident recreational licenses. Commencing with the first Monday in April, the town clerk shall maintain a chronological list of nonresidents seeking recreational shellfish licenses. When the number of resident recreational shellfish licenses reaches a number where a nonresident recreational shellfish license may be issued, the town clerk shall by telephone and U.S. mail attempt notification of the applicant with the highest priority on the list. That person shall purchase the license within seven (7) business days from the date notification is attempted. If the purchase is not made in that time period, that person loses their priority and the town clerk shall attempt notification of the next person on the list using the same process.

- (b) The following procedure will be followed to control commercial shellfish license availability:
 - (1) Prior to January 1 of each year, the town clerk shall notify by mail all commercial shellfish license holders from the then expiring license period and those persons who filed a notice of intent in either of the past two (2) years that an applicant for a commercial shellfish license for the coming license period must notify the town clerk of that person's intent to seek a resident or nonresident commercial shellfish license for the coming license period. The notice of intent shall be on the form prepared by the town clerk, shall be mailed as stated above and shall be available at the town clerk's office. The notice shall also be published in a trade or industry publication or in a newspaper or combination of newspapers with general circulation which the municipal officers consider effective in reaching persons affected not less than ten (10) days prior to the first Friday of February and shall be posted in the municipal offices until the end of business on the first Friday of February.

Any person who does not complete and return to the town clerk by 4:30 p.m. on the first Friday

in February a fully completed notice of intent on the form prepared by the town clerk along with two (2) proofs of residency, shall not be eligible to be an applicant for a resident or non-resident commercial license in the next coming license period, and if the person does not file a notice of intent for two (2) successive license periods, shall not be considered as previously having held a Brunswick resident or nonresident commercial shellfish license. The notice of intent must be delivered in person, and must be received by the town clerk by the above deadline. In the event the Brunswick municipal offices are closed during any portion of the normal office hours on the first Friday of February, the deadline for submitting a notice of intent shall be extended to the close of business on the next normal business day the municipal offices are open.

An applicant on active military duty, whether because of enlistment or activation by a proper authority, may preserve, but not advance, that applicant's status in the commercial license selection process by returning a notice of intent to the town clerk by the first Friday in February. The active duty applicant need not deliver the notice of intent in person. The active duty applicant must include proof from a military authority that the applicant is on active duty and that the applicant is a resident of Brunswick, Maine, as defined in this chapter. The applicant is not required to participate further in the commercial license selection process, and the applicant shall not be reduced in the commercial license classes in any year the applicant complies with this paragraph.

- (2) Prior to the second Friday of January, the marine resource committee will establish the number of commercial shellfish licenses to be made available.

The Brunswick Marine Resource Committee shall use the following procedure in order to determine the number of resident commercial shellfish licenses.

The standing crop of harvestable shellfish shall be determined by shellfish population surveys for the upcoming shellfish license year. The average yield a harvester could expect to harvest on any given day will be one and one-half (1 1/2) bushels of shellfish. The number of harvestable days for shellfishing in any license year shall be two hundred forty-five (245) days, resulting from no night harvesting a projected forty-seven (47) day rainfall/PSP closure, and seventy-three (73) day closure due to winter conditions.

The committee shall divide the total standing crop by the number of harvestable days, then divide the resulting number by one and one-half (1.5) bushels per harvester per day. The final number will be the number of licenses to be issued to resident commercial harvesters. Nonresident commercial shellfish harvesters will be an additional ten (10) percent of that number. Total standing crop ÷ (one and one-half (1.5) bushels per harvester per day ÷ (two hundred forty-five (245) days = number of resident commercial shellfish licenses.

- (3) The marine resources committee will notify the town clerk in writing prior to the second Friday of January of the number of commercial shellfish licenses, by type and class, to be made available for issue.

If the town is notified by the Maine Department of Marine Resources of an impending closure of harvestable acreage after the second Friday in January, the committee shall recalculate the

number of commercial shellfish licenses made available, and notify the town clerk in writing prior to the second Friday in February.

The town clerk will prepare a list of the persons eligible for licenses in Classes A through F in subsection (4). The public notification of license availability shall include a statement that the list is posted at the town office. No shellfish licenses may be reserved and licenses cannot be transferred or resold by applicants. Applicants for a shellfish license who meet the requirements of this article must obtain the shellfish license in person unless the applicant has filed with the town clerk a notarized statement designating a certain other person to obtain the license on the applicant's behalf or unless medically unable to do so. A person medically unable to obtain the shellfish license may send another person who shall present to the town clerk written authorization and a written statement from a physician regarding the applicant's condition.

- (4) The town clerk shall issue resident commercial and non-resident commercial licenses according to the selection process described below. Resident applications and non-resident applications shall be segregated in each class. The classes shall be followed in descending order. A number equivalent to ten (10) percent of the total number of resident commercial licenses, regardless of class, shall be issued to non-resident commercial applicants. Reciprocal licenses from previous years do not qualify as resident commercial licenses or non-resident commercial licenses. The classes are:

RESIDENT

- A. Applicants who have held resident commercial licenses for five (5) of the last five (5) years.
- B. Applicants who have held resident commercial licenses for four (4) of the last five (5) years.
- C. Applicants who have held resident commercial licenses for three (3) of the last five (5) years.
- D. Applicants who have held resident commercial licenses for two (2) of the last five (5) years.
- E. Applicants who have held resident commercial licenses for one (1) of the last five (5) years.
- F. Applicants who have held resident commercial licenses for zero (0) of the last five (5) years.

NONRESIDENT

- A. Applicants who have held nonresident commercial licenses for five (5) of the last five (5) years.

- B. Applicants who have held nonresident commercial licenses for four (4) of the last five (5) years.
- C. Applicants who have held nonresident commercial licenses for three (3) of the last five (5) years.
- D. Applicants who have held nonresident commercial licenses for two (2) of the last five (5) years.
- E. Applicants who have held nonresident commercial licenses for one (1) of the last five (5) years.
- F. Applicants who have held nonresident commercial licenses for zero (0) of the last five (5) years.

On the third Friday in February, the town clerk shall issue licenses to the classes in which licenses are available for each applicant. The licenses shall be purchased by the end of business on the tenth (10th) business day after issuance.

After the issuance of licenses to the classes in this subsection (4) in which licenses are available for each applicant, the remaining classes shall be issued licenses by lottery. The lottery shall apply to the classes alphabetically. If there is at least one (1) applicant in excess of the number of available licenses in a class, the town clerk shall also hold a lottery for the next class. The lottery shall be held on the second Thursday in March. As applicant names are drawn by lottery, a list will be compiled showing order of eligibility. Licenses will be available for purchase after the lottery during regular town office business hours until the end of the first business day following the lottery. If, at the end of the first business day following the lottery, one (1) or more licenses remain in a class, the next eligible applicant(s) in that class will have two (2) days to purchase the license(s).

If licenses remain after the issuance of licenses to each applicant in the classes in this subsection (4) during the first ninety (90) days of the issuance process, the town clerk shall issue licenses to residents or nonresidents according to the following process:

The town clerk shall prepare public notification of license availability which shall be published in a newspaper of general circulation in the area on the Friday which is after the third Monday in March and posted at the town office. The notification shall inform prospective applicants to file a lottery participation notice to seek a resident or nonresident commercial shellfish license. The lottery participation notice shall be on the form prepared by the town clerk, and available at the town clerk's office.

Any person who does not complete and return the lottery participation notice to the town clerk by 4:30 p.m. on the Friday following publication shall not be eligible to be an applicant.

The town clerk shall prepare a list of the persons eligible to compete for a license in this category. The list shall be posted at the town office. Resident applications and nonresident applications shall be segregated.

On the Monday immediately following the return deadline, the town clerk shall hold a lottery to select the applicant or applicants who shall receive licenses. Licenses shall be purchased by the end of business on Tuesday, the next day. If the licenses are not purchased by that time, they shall be offered to the next succeeding person or persons in the lottery who shall have two business days after notification to purchase the license.

If licenses remain after the first ninety (90) days of the issuance process, they shall be equally available to residents and nonresidents.

If a license becomes available because it is suspended to or past the end of the license year, void or surrendered during the license year, it shall be offered to the next succeeding person, if any, identified in the initial lottery process according to the category of the license suspended, void or surrendered, resident or nonresident. That person shall have seven (7) business days after attempted telephone and U.S. mail notification to purchase the license. If no person remains from the initial lottery process, or if there was no initial lottery process, the license shall not be reissued.

Nothing in this subsection shall be interpreted to restore or expand any other rights or waive any qualification provisions under this article. For the following license year, a person who held licenses in some or all of the proceeding (5) five years and who qualified for a license during the period of issuance but did not receive a license, shall be in the class determined by this lottery license and previous licenses. A person who receives a license in this lottery and who has held no licenses for the proceeding (5) five years shall be in a Class E for the following license year.

If the Brunswick municipal offices are closed during any portion of the normal office hours on the first day set above for issuing licenses to a class, any remaining licenses for that class must be issued and purchased prior to closing of the municipal offices on the next normal business day the municipal offices are open. If the Brunswick municipal offices are closed during any portion of the normal office hours on the second day set above for issuing licenses to a class, any remaining licenses for that class must be issued and purchased prior to noon on the next normal business day the municipal offices are open.

For the purposes of the above selection process, a license does not remain for a class in the descending order if a person in the class above is issued a license but does not purchase the license within the required time, and others in the class above did not obtain a license because the number of persons in the class above exceed the number of available licenses. Rather, the license shall be issued to the persons in the class above who did not obtain a license, by lottery if necessary.

For the purpose of the above selection process, a person who was a Brunswick resident and subsequently established residency in another place outside the Town of Brunswick and obtained a resident commercial shellfish license in that place, shall not be considered as previously having a Brunswick resident commercial shellfish license.

For the purposes of the above selection process, a person who is issued a license but does not purchase the license within the required time for two (2) successive license years shall not be considered as previously having a Brunswick commercial shellfish license.

- (5) The town clerk or the town clerk's designee shall begin to issue resident and nonresident recreational shellfish licenses on the first Monday in April.
- (c) A copy of this article shall be given with each commercial and student license issued.
- (d) The following procedure will be followed to control student shellfish license availability:
 - (1) Prior to the second Friday of January, the marine resource committee will establish the number of student shellfish licenses to be made available. Not less than ten (10) percent of the student shellfish licenses shall be made available to nonresidents, except that if the number established is five (5) or fewer, none is required to be made available to nonresidents, and if the number is more than five (5) but fewer than ten (10), at least one (1) is required.

The marine resources committee will notify the town clerk in writing prior to the second Friday of January of the number of student licenses to be made available for issue.

- (2) Notice of intent application for student licenses will be available on the first Friday in April at the Town Clerk's Office, 28 Federal Street, Brunswick. The town clerk shall publish a notice of availability of student notice of intent applications for shellfish harvesting in a newspaper of general circulation no later than the first Friday of April. Student harvesters must deliver a completed notice of intent to the town clerk's department, in person, no later than 4:30 p.m. on the first Friday of May. If there are more applicants than there are licenses available, the selection process shall be by lottery. On the second Friday in May, the town clerk shall hold a lottery if needed to select the applicant or applicants who shall receive licenses. Licenses shall be purchased by the end of business on the third Friday of May. If the licenses are not purchased by that time, they shall be offered to the next succeeding person or persons in the lottery who shall have seven (7) business days after the town clerk by telephone and U.S. mail notifies the person or persons to purchase the license.

If student shellfish licenses remain after the first ninety (90) days of the issuance process, they shall be equally available to residents and nonresidents.

- (3) Student shellfish license holders will need to appear in person at the time they purchase their licenses to have their pictures taken for their licenses. The town clerk's office will mail out licenses to student license holders by June 10th.
- (4) Before taking shellfish on June 15th, the student shellfish licensees shall provide the certified municipal shellfish conservation warden, or his or her designee, proof that the information in the application remains correct.

(e) Notice of the dates, places, times and the procedures for the recreational license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than ten (10) days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to the commissioner of marine resources.

(Ord. of 3-6-89, § 309; Ord. of 2-5-90, § 309; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 2-22-94,

Ord. of 8-15-94; Ord. of 1-16-96; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Emergency Ord. of 3-16-98; Ord. of 3-16-98, Ord. of 3-16-99; Emergency/Regular Ord. of 7-6-99; Ord. of 1-18-00(1); Ord. of 6-5-00(1); Ord. of 2-6-01(1); Ord. of 12-2-02; Ord. of 11-3-03; Ord. of 2-22-05; Ord. of 10-3-05; Ord. of 10-24-05)

Sec. 11-141. Suspension.

(a) Violation of article. The town marine resource committee shall, after notice and hearing, suspend any and all licenses issued under this article if a person is convicted in court of violating any section of this article.

(b) Suspension based on conviction in a town closed conservation area. The marine resource committee shall, after notice and hearing, suspend any and all licenses issued under this article when the license holder has been convicted in court of harvesting shellfish from a town closed conservation area. The suspension shall be sixty (60) days for a first conviction and for a second conviction for the remainder of the shellfish year. In addition, a person with a second conviction shall not qualify as an applicant for five (5) years from the date of the second conviction.

(c) Suspension based upon violation of recreational license requirement. The marine resource committee shall, after notice and hearing, suspend any and all licenses issued under this article when they find the harvester has violated the requirements of this article for recreational or student licenses. The suspension shall be twelve (12) months for the first finding. The suspension shall be for the balance of the license year for the second finding and, in addition, a harvester with a second finding shall not qualify as an applicant for a recreational or student license for five (5) years from the date of the second finding.

(d) The marine resource committee shall, after notice and hearing, suspend any and all licenses issued under this article, if the license holder refuses to allow inspection or seizure under section 11-138. This suspension may not exceed two (2) years.

(e) Length of suspension where otherwise not specified. The suspension of a license may not exceed the following:

- (1) Thirty (30) days for the first conviction.
- (2) The remainder of the license year for the second conviction.

In addition, a harvester with a second conviction in a twelve (12) month period arising out of separate events shall not qualify as an applicant for a license for one (1) year.

(f) Applicable standards. Any conviction for violations occurring more than five (5) years before the most recent date of violation resulting in a conviction shall not be counted in determining lengths of suspension. (Ord. of 3-6-89, § 311; Ord. of 2-5-90, § 311; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 2-22-94, Ord. of 8-15-94; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1))

Sec. 11-142. Aiding and abetting.

A harvester holding a commercial license who aids or abets the harvest of shellfish in violation of this Article shall be subject to the same penalties as the person he has assisted.
(Ord. of 3-6-89, § 312; Ord. of 2-5-90, § 312; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 1-18-00(1))

Sec. 143. Suspension based on state shellfish license being suspended.

The marine resource committee shall, after notice and hearing, suspend any and all licenses issued by this article when the license holder's State of Maine Department of Marine Resources Shellfish License is suspended. The suspension shall remain in effect until the license holder's State of Maine Department of Marine Resources Shellfish License is reinstated.
(Ord. of 3-6-89, § 313; Ord. of 2-5-90, § 313; Ord. of 3-4-91; Ord. of 2-18-92, Ord. of 4-5-93, Ord. of 8-15-94; Ord. of 3-16-99)

Sec. 11-144. Hearing.

If the certified municipal shellfish conservation warden presents to the marine resource committee evidence that any licensee has been convicted of violating this article or the licensee's State of Maine Department of Marine Resources Shellfish License has been suspended, the marine resource committee shall give the licensee seven (7) days notice of the suspension of the license, stating the reason for the suspension. The licensee has the right to meet with the marine resource committee during that seven-day period to review the evidence of convictions or suspension in the marine resource committee's possession and to present any evidence showing the licensee does not have the convictions or the suspension.
(Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 3-16-99)

Sec. 11-145. Expiration.

Resident commercial shellfish and nonresident commercial licenses issued under authority of this article shall expire on the third Friday of March in the following calendar year. Resident student shellfish and nonresident student shellfish licenses issued under the authority of this article shall expire September 1. Resident recreational and nonresident recreational licenses issued under authority of this article shall expire on the day before the first Monday of April.
Ord. of 3-6-89, § 306; Ord. of 2-5-90, § 306; Ord. of 2-18-92, Ord. of 8-15-94; Ord. of 3-16-99; Ord. of 12-2-02; Ord. of 11-3-03)

Secs. 11-146--11-160. Reserved.

DIVISION 5.

REGULATIONS

Sec. 11-161. Opening and closing of coastal waters.

(a) The marine resource committee, with the approval of the commissioner of marine resources, and the direct consent of the town council, and this consent to be given by the town council on an annual basis at

their first regular meeting after the organization meeting, may open and close coastal waters. Except for emergency closures, or openings, the marine resource committee shall call a public hearing and shall send a copy of the notice to the Department of Marine Resources. At the hearing, the staff shall present evidence obtained from its survey and other sources, and members of the public may present evidence in support or refutation of the evidence presented by the staff. In the event of an emergency closure, or openings, the marine resource committee shall hold a public hearing as soon as practical, considering the need for adequate public notice and participation.

The chair may determine that an opening or closing shall be placed on the agenda and shall direct staff to give notice of the hearing. Notice shall be posted at the town office, placed on the marine resource's recording, and published in a newspaper of general circulation no less than seven (7) days before the date of the hearing.

(b) After the hearing is closed, the marine resource committee shall make findings of fact on the relevant evidence presented. They shall then make a conclusion based on those findings of fact as to whether opening of coastal waters as requested is warranted by the recovery of the resource; or the freedom from predation, competition or other resource problem. If so, the marine resource committee with the concurrence of the department of marine resources shall order the coastal waters opening and shall set such time limitations and other harvesting conditions as are consistent with good conservation practices. If the request is to close the coastal waters, the marine resource committee shall make a conclusion based on their findings of fact as to whether closing the coastal waters is warranted by depletion of the shellfish, destruction of existing seed; or predation, competition or other resource problem. If so, the marine resource committee shall order the coastal waters closed until further request for opening by the staff. Any proposal for opening or closing of coastal waters shall be approved by the commissioner of marine resources prior to enactment.

(c) When the marine resource committee opens or closes the coastal waters, the committee's action may be reviewed at a regularly or specially scheduled town council meeting. The town council may uphold, reverse or amend the opening or closing decision of the marine resource committee.

(Ord. of 3-6-89, § 203; Ord. of 2-5-90, § 203; Ord. of 2-18-92, Ord. of 4-5-93, Ord. of 2-22-94; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1))

Sec. 11-162. Shellfish size and tolerance of harvest.

A person shall not harvest or possess softshell clams which are less than two (2) inches in the longest diameter to the amount of more than ten (10) percent of any lot; quahogs which are less than one (1) inch in width; or oysters which are less than three (3) inches in length.

(Ord. of 3-6-89, § 302; Ord. of 2-5-90, § 302; Ord. of 2-18-92; Ord. of 3-16-99; Ord. of 1-18-00(1))

Sec. 11-163. Method of determining tolerance.

The tolerance of ten (10) percent must be determined by a numerical count of not less than one (1) nor more than four (4) pecks taken at random from various parts of the lot. If the entire lot contains less than one (1) peck, the tolerance must be determined by numerical count of the entire lot.

(Ord. of 3-6-89, § 303; Ord. of 2-5-90, § 303; Ord. of 2-18-92; Ord. of 3-16-99)

Sec. 11-164. Night shellfish harvesting prohibited.

It is unlawful to harvest, take or possess shellfish from one (1) hour after sunset until one (1) hour before sunrise. The time table prepared by the Nautical Almanac Office of the U.S. Navy for Augusta, Maine will be the official time.

(Ord. of 1-16-96; Ord. of 3-16-99)

Sec. 11-165. Sunday shellfish harvesting prohibited.

Repealed

(Ord. of 3-18-96; Ord. of 3-16-99; Emergency/Regular Ord. of 7-6-99; Ord. of 1-18-00(1); Ord. 10-24-05)